the running of the statute of limitations as to all *makers* and *sureties,* and that the statute commences to run again only from the day when the last payment was made. And *Garrett* v. *Reeves,* supra, expressly decided that the right against the defendant *indorser* was revived by a payment by the maker; that decision rested on the statute of 1827, (R. S., c. 13, § 10), construed to mean that an indorser was liable as a surety to the holder of the note. The court recognized the distinction between a surety and an indorser, as laid down in *Le Duc* v. *Butler,* 112 N. C. 461, 17 S. E. 428, but ruled that the distinction did not apply against a holder of the note, as to the statute of limitations. Now the court in the instant case refused to construe the statute of 1827 the same way, but decided upon the broad distinctions between a surety and an indorser, as stated in *Le Duc* v. *Butler,* supra. It is said that the rule previously laid down in the state ought not continue, because of the protection given in commercial law to the party of secondary liability.

COMMERCE — "INTERSTATE COMMERCE." — The plaintiff was injured while engaged in tearing down part of a railroad roundhouse, rendered useless by a fire. The active function of the roundhouse, as an instrumentality of interstate commerce had ceased to exist; the work of removal being necessary that a new building might be erected for railroad purposes, which would likely be used in connection with interstate commerce. *Held,* that the plaintiff was not engaged in "interstate commerce" at the time of his injury, and had no cause of action under the Federal Employers' Liability Act. *Thomas* v. *Boston & M. R. R.* (1914), 218 Fed. 143.

Under the Federal Employers' Liability Act a right of recovery exists only where the injury is suffered while the carrier is engaged in interstate commerce. *Pederson* v. *Del., Lack. & West. R. R.,* 229 U. S. 146. In that case it was held that a railroad employe carrying bolts to be used in repairing a bridge on an interstate railroad, and who is injured by an interstate train is entitled to sue under the Employers' Liability Act of 1908. There was a strong dissenting opinion, in which two Justices concurred, which held that the statute does not extend to the incidents of interstate commerce but is confined to transportation; that it does not include manufacturing, building or repairing, whether performed by a private person, or a railroad, for they are not commerce. In a later case, *Ill. Cent. R. R.* v. *Behrens,* 233 U. S. 473, it was held that an employe of an interstate railroad engaged in switching cars of intrastate freight, was not an employe engaged in "interstate commerce," and that upon completion of that task, he expected to engage in another which is a part of interstate commerce is immaterial under the Employers' Liability Act of 1908, and will not bring the action under the act.

CONSTITUTIONAL LAW—STATE AS DEFENDANT.—The State of Oklahoma created a depositors' guaranty fund (Laws 1911, ch. 31, amended by Laws 1913, ch. 22) which provided that by the levy of an assessment on state banks, the full repayment by the State Banking Board, of all deposits in case any bank failed, was guaranteed to all depositors. The Farmers' and Merchants'

Bank of Sapula having failed, the plaintiff demanded the payment of a certificate of deposit, by the banking board, out of the fund, which was refused. This suit was then brought to enforce payment. *Held,* by a divided court and reversing the District Court, that the title to the fund was in the State and that the intent of the Legislature was to place the title here, so as to extend to the board the State's immunity from suit, so that such a suit would be violative of the Eleventh Amendment to the United States Constitution, prohibiting suits against a State without its consent. *Lankford et al.* v. *Platte Iron Works Company,* 35 Sup. Ct. 173.

The State may not be sued without its consent, and this immunity extends to suits against officers and agents of a State, where the State, though not named as such, is nevertheless the only real party against whom relief is asked. *In re Ayres,* 123 U. S. 443; *Kananankoa* v. *Polybank,* 205 U. S. 349. But it is also true that this rule does not include suits against officers in their official capacity, where the suits are authorized by law, and the act to be done or omitted is purely ministerial, or in other words, when the act of the officer is personal, "in opposition to, not in conformity with, the law of the State." *In re Ayers, supra; Board of Liquidation* v. *McComb,* 92 U. S. 531. In the instant case, whether the statute brings it within one or the other of the rules, is a question of interpretation. The prevailing opinion gives great weight to the case of *Murray* v. *Wilson Distilling Co.,* 213 U. S. 151, which arose out of the giving up of the liquor dispensary scheme by the State of South Carolina and the appointment of a board to wind up the affairs of the dispensary. There is a distinction, it seems, between that case and the instant case. In the former the absolute title to all of the property was originally in the State and the board was merely disposing of the State's interest. In the instant case the fund was accumulated from a contribution by private parties according to the law of the State. The State, if the project had failed or the statute had been repealed, would have had no shadow of a reversionary right. In the *Murray* case the reversionary right of the State could not have been doubted. Again, in the *Murray* case any deficit would have to be made up out of the State treasury, if at all. In this case any deficit would come from the contributing banks. Though it does not seem to have been contended in the case, if the action had been brought on a different theory, and if as it seems other claims were paid and the plaintiff refused without cause, more success might have attended plaintiff's efforts. From a reading of the case it appears upon the facts given that it might be brought within the limitation laid down in *Yick Wo* v. *Hopkins,* 118 U. S. 356. In that case the principle was declared, that though the law be fair and constitutional on its face, that if it is administered with a partial eye or so arbitrarily that it makes unjust and unequal discriminations between parties in like circumstances, this is a denial of equal justice, and within the prohibition of the Fourteenth Amendment. In the instant case nowhere is it denied that the claim of the plaintiff is a just one. The refusal of the board seems to be without cause, and therefore discriminatory and arbitrary so as to bring it within the principle of the above case.